

REMARKS

Reconsideration of this application is respectfully requested in view of the foregoing amendment and the following remarks.

Claims 1-31 were pending in this application. By this Amendment, Applicants cancel claim 31 and amend claim 30 to include the subject matter of claim 31. Applicants also amend claim 26 to correct a typographical error. Accordingly, claims 1-30 will be pending herein upon entry of this Amendment. For the reasons stated below, Applicants respectfully submit that all claims pending in this application are in condition for allowance.

Applicants amend the specification to correct the informalities cited by the Examiner and to improve form when referring to priority level 1 and priority level 4 in Figs. 5A and 5B.

In the Office Action, the Examiner objected to the specification due to informalities; rejected claims 1-8, 12-17 and 20-31 under 35 U.S.C. § 103(a) as unpatentable over U.S. Patent No. 6,175,621 to Begeja (“Begeja”) in view of U.S. Patent No. 6,421,335 to Kilkki et al. (“Kilkki”); rejected claims 9-11 under 35 U.S.C. § 103(a) as unpatentable over Begeja in view of Kilkki and further in view of U.S. Patent No. 5,790,522 to Fichou et al. (“Fichou”); and objected to claims 18 and 19 as being dependent upon a rejected base claim. The Examiner indicated claims 18 and 19 would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Applicants thank the Examiner for the indication of allowable subject matter in claims 18 and 19.

Claims 1-8, 12-17 and 20-31 were rejected under 35 U.S.C. § 103(a) as unpatentable over Begeja in view of Kilkki.

Regarding independent claim 1, a combination of Begeja and Kilkki fails to teach or suggest at least that “transactions of lower priority are temporarily discontinued in favor of higher priority transactions when network capacity reaches a predetermined level,” as recited in claim 1. Similarly, the combination fails to teach or suggest “discontinuing the transmission of the transaction of lower priority,” as recited in independent claim 30.

The Examiner admits at page 3 of the Office Action that Begeja does not teach this feature of claim 1 and claim 30. The Examiner then relies upon Kilkki at Fig. 12 and col. 16, lines 4+ for allegedly disclosing that transactions of lower priority are temporarily discontinued in favor of higher priority transaction when network capacity reaches a predetermined level.

However, Kilkki teaches that packets are transmitted by a CDMA protocol only when they have an acceptable priority. For example, Fig. 12 of Kilkki shows four processes: (1) establishing a nominal bit rate; (2) calculating relative packet priority; (3) calculating allowable packet priority; and (4) transmitting packets having acceptable priority. The “allowable packet priority” is a calculation that determines how many users can use the system so that the signal-to-noise ratio is not prohibitively elevated. (See col. 11, line 51 to col. 12, line 2.) In other words, it determines the load of the CDMA connection to determine whether a packet may be transmitted. For example, Kilkki discloses at col. 16, lines 6-10 “where the packet priority is greater than or equal to the allowable priority the packet is transmitted 229; otherwise it is not. Where the packet is not transmitted, the transmission can be temporarily suspended, or the packet can be discarded...”

b

Thus, Kilkki simply discloses transmitting an incoming packet, or allowing a user to use the system, if its priority exceeds a threshold. If not, the users request (i.e., the incoming transmission) is suspended or delayed. Thus, Kilkki discloses that an incoming packet is not sent if all of a plurality of access links are occupied. Kilkki does not teach or suggest at least “transactions of lower priority are temporarily discontinued in favor of higher priority transactions when network capacity reaches a predetermined level,” as recited in claim 1 or “discontinuing the transmission of the transaction of lower priority,” as recited in claim 30.

Accordingly, a combination of Begeja and Kilkki fails to teach or suggest all the claim limitations of claims 1 and 30, and the § 103(a) rejection of claims 1 and 30 should be withdrawn. The rejection of claims 2-19 should be withdrawn as well, at least in view of their dependence from allowable claim 1.

Regarding the rejection of independent claim 20, claim 20 recites, in part, “broadcasting an indication of the capacity of the cell to wireless communications devices operated with the cell,” and “receiving a request from a wireless communications device to transmit a wireless communication transaction at a selected priority level from the plurality of priority levels, wherein the selected priority level is determined based upon the capacity of the cell broadcasted to the wireless communications device.”

In contrast, a combination of Begeja and Kilkki fails to disclose or suggest at least the above recited features in claim 20. Begeja, which relates to a method and system for setting a priority level of a call, does not teach or suggest at least broadcasting an indication of the capacity of the cell, let alone performing additional processes based upon such broadcasting.



Similarly, Kilkki, which discloses calculating an acceptable packet priority, does not teach or suggest at least the claimed broadcasting and receiving steps recited in claims 20. Because a combination of Begeja and Kilkki fails to teach or suggest all the claim limitations of claim 20, and the § 103(a) rejection of claim 20 should be withdrawn. The rejection of claims 21-26 should be withdrawn as well, at least in view of their dependence from allowable claim 20.

Applicants respectfully note that the rejection of claim 20 does not specify how (or whether) the references teach or suggest the recitations of claim 20 described above (as well as others). Because the rejection does not address how any prior art reference allegedly teaches the features recited in independent claim 20, Applicants do not have a factual basis upon which to respond. Accordingly, to the extent that the Examiner rejects claim 20 in a subsequent Office Action, Applicants kindly request the Examiner **NOT to deem such an Office Action as final.** Any rejection of these claims would raise new issues for the Applicants to consider and to address.

Regarding independent claim 27, claim 27 recites, in part, “providing a selection of priorities available for transmitting wireless communication transactions of a plurality of different types, wherein each type of transaction is generated by a different user application operating on the wireless communications device” (emphasis added). Figure 1 of the present application, for example, describes user applications such as games, e-mail and an IT phone.

In contrast, Begeja discloses that a caller may select a priority level for a call over a PBX network by dialing a predetermined telephone or activating a central office feature that a caller can subscribe to by dialing a special number sequence, such as *46. (See col. 3, lines 4-17.)

B

Begeja further discloses that a user can increase the priority level of a call by pressing *55 when a busy signal is reached. (See col. 3, lines 18-22.) Thus, Begeja does not disclose or suggest different user applications or a wireless communications device, let alone generating different types of transactions by different user applications operating on the wireless device and providing a selection of priorities available for transmitting wireless communication transactions of the plurality of different types.

Kilkki also does not teach or suggest at least "providing a selection of priorities available for transmitting wireless communication transactions of a plurality of different types, wherein each type of transaction is generated by a different user application operating on the wireless communications device." Because a combination of Begeja and Kilkki fails to teach or suggest all the claim limitations of claim 27, and the § 103(a) rejection of claim 27 should be withdrawn. The rejection of claims 29 and 29 should be withdrawn as well, at least in view of their dependence from allowable claim 27.

Applicants respectfully note that the rejection of claim 27 does not provide a factual basis specifying how the cited references teach or suggest at least the recitation of claim 27 described above. Accordingly, Applicants kindly repeat their request to the Examiner NOT to deem any subsequent Office Action as final.

Regarding the rejection of claims 9-11, Fichou fails to cure the deficiencies described above in relation to the rejection of claim 1. Accordingly, claims 9-11 should be allowable as well, at least in view of their dependence from allowable claim 1.

(b)

Serial No.: 09/559,593
Art Unit: 2665

Attorney's Docket No.: BS99-186
Page 17

In view of the foregoing all of the claims in this case are believed to be in condition for allowance. Should the Examiner have any questions or determine that any further action is desirable to place this application in even better condition for issue, the Examiner is encouraged to telephone applicants' undersigned representative at the number listed below.

SHAW PITTMAN LLP
1650 Tysons Boulevard
McLean, VA 22102
Tel: 703/770-7581

Date: December 4, 2003

Respectfully submitted,
SAMUEL N. ZELLNER ET AL.

By: Tara Hutchings
Tara L. Hutchings (Bleech)
Registration No. 46,559

MAO/TLH

Document #: 1262223 v.1

(B)